IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1947.

No. 671

CARGILL, INCORPORATED,
Petitioner,

vs.

THE BOARD OF TRADE OF THE CITY OF CHICAGO, et al.,
Respondents.

RESPONSE TO PETITION FOR REHEARING ON ORDER OF DENIAL OF PETITION FOR WRIT OF CERTIORARI.

Nothing set forth in the Petition for Rehearing warrants a reversal of the order of this Court which denied the Petition for a Writ of Certiorari.

Petitioner states that the Petition for a Writ of Certiorari raised the question whether the Regulations 1894 and 1899 of the Board of Trade of the City of Chicago constituted an unreasonable restraint of trade in violation of the Sherman Act, but that the Petition did not point out the asserted error of the court below in failing to pass upon the sufficiency of the Amended Complaint "in its entirety". (Pet. for Reh. pg. 2.) Petitioner then argues that if the general allegations of combination and conspiracy, etc.,

contained in paragraphs 15 and 16 of the Amended Complaint, be accorded controlling importance, the Amended Complaint does state a claim upon which relief can be granted.

None of the decisions cited in the Petition for Rehearing supports the proposition that the specific facts of the case well pleaded may be disregarded. The allegations of the Amended Complaint taken as an entirety are comprehensive and specific concerning the adoption of Regulations 1894 and 1899 and concerning the supposed damage sustained by petitioner from the operation and enforcement of said Regulations. Because the facts alleged in the Amended Complaint upon which the petitioner bases its claim disclose affirmatively the non-existence of any claim upon which relief can be granted, it follows that this cause was properly adjudicated on the pleading below and that the denial of a Writ of Certiorari by this Court was proper.

In now asking that the Court consider whether the generalizations and characterizations in petitioner's pleading warrant the granting of a Writ of Certiorari it would appear that petitioner is not presenting a new *ground* for allowance of the writ, within the meaning of Rule 33, but is advancing a new question of alleged error below not previously raised, in disregard of Rule 38 and the policy of the Court. (Robertson and Kirkham, Jurisdiction of the Supreme Court of the United States, pp. 552-553.)

Petitioner states that the decision below has "far-reaching consequences" (Pet. for Reh., pp. 7-9), and in support of this assertion as a reason for rehearing presents what is essentially the same argument made by it in the petition for a Writ of *Certiorari* (Pet. for Cert., pp. 18-24). Petitioner also refers to the emergency rules of various ex-

changes, not appearing in the record (Pet. for Reh., pp. 7, 11-26). But Rule 33 of the Court makes no provision for the filing of a petition for rehearing which suggests grounds already urged in the original petition for certiorari, or which is based upon matter not appearing of record.

Finally, Rule 33 requires that the grounds not previously urged, upon which rehearing is sought, must be "substantial". The Petition for Rehearing considered as a whole is not based upon any ground which is substantial, within the meaning of Rule 33, and for that reason, also, rehearing should be denied. (*A. B. T. Manufacturing Corp.* v. *National Slug Rejectors, Inc.*, No. 506, 92 L. Ed. 583.)

Respectfully submitted,

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